

Internal Revenue Service
Director, Exempt Organizations
Rulings and Agreements

Department of the Treasury
P.O. Box 2508
EO DQA, Room 7008
Cincinnati, Ohio 45201

Date: [REDACTED]

Employer Identification Number
[REDACTED]

Person to Contact - I.D. #:
[REDACTED]

Contact Telephone Numbers:
[REDACTED]

[REDACTED] (Fax)

Dear Sir or Madam:

We have considered your application for recognition of exemption from Federal income tax under the provisions of section 501(c)(7) of the Internal Revenue Code of 1986 and its applicable Income Tax Regulations. Based on the available information, we have determined that you do not qualify for exemption for the reasons set forth on Enclosure I.

Consideration was given to whether you qualify for exemption under other subsections of section 501(c) of the Code. However, we have concluded that you do not qualify under another subsection.

Since you have not established exemption from Federal income tax, it will be necessary for you to file an annual income tax return on Form 1120.

If you are in agreement with our proposed denial, please sign and return one copy of the enclosed form 6018, Consent to Proposed Adverse Action.

You have the right to protest this proposed determination if you believe it is incorrect. To protest, you should submit a written appeal giving the facts, law and other information to support your position as explained in Publication 892, "Exempt Organizations Appeal Procedures for Unagreed Issues." The appeal must be submitted within 30 days from the date of this letter and must be signed by one of your principal officers. You may request a hearing with a member of the office of the Regional Director of Appeals when you file your appeal. If a hearing is requested, you will be contacted to arrange a date for it. The hearing may be held at the Regional Office or, if you request, at any mutually convenient District Office. If you are to be represented by someone who is not one of your principal officers, he or she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements as set forth in Section 601.502 of the Statement of Procedural Rules. See Treasury Department Circular No. 230.

[REDACTED]

If we do not hear from you within the time specified, this will become our final determination.

Sincerely,

[REDACTED]

Director, Exempt Organizations
Rulings and Agreements

Enclosures: 3

Enclosure I
Publication 892
Form 6018

cc: [REDACTED]

[REDACTED]

Enclosure I

Facts:

The information submitted indicates you were incorporated under the laws of the State of [REDACTED] on [REDACTED]

Your stated purpose is to "promote and preserve, improve and advance conditions and habitat favorable to the Conservation of Wildlife and the Natural Resources, to encourage and advance good sportsmanship afield between [REDACTED] and Landowners to continue enjoyment together to protect the Heritage bestowed by Nature" For mutual benefit of all its members, to acquire by purchase, land, to own, hold and maintain suitable Real Estate and Personal Property, and to do all things necessary or essential thereto, to develop, maintain and provide means and facilities for the recreation of members and guests."

Your bylaws provide that membership shall be extended to "All citizens of the United States of America of good reputation and not members of any organization or group known to be subversive to, or advocating the overthrow of the government of these United States, or to disrupt our American Heritage."

Your bylaws further provide that those admitted to the club are required to serve a six-month probationary period after the payment of an initiation fee of [REDACTED] dollars. In addition to the initiation fee, annual dues of [REDACTED] dollars shall be required with the initial amount of such dues payable with an application for admission. Such individuals are further required to purchase at least (1) [REDACTED] dollar non-refundable Certificate of Deposit in the incorporated affairs of the Club. A refund of any excess Certificates of Deposit above the required minimum may be refunded in the event of voluntary withdrawal, expulsion or in the case of death of a member, to the next of kin. Certificates of deposit are otherwise non-transferable. However, a member may donate their Certificate to the Club in which case, it will signed over to the Club, marked "void", and a permanent record of which will be maintained by the club.

Your activities, as listed in Part II, item 1 of Form 1024, include maintenance of club property used for target shooting (archery and firearms) and hunting and fishing. You also sponsor occasional special dinners for Club members and organize regularly scheduled shooting contests and other special events.

Your organization's receipts are derived primarily from fees paid by participants in activities, and purchases of goods and services. In Part II, item 2 of your application, you listed these revenue-producing activities as follows (in descending order of income produced):

[REDACTED]

Archery, trap, turkey shoot, Kitchen, Viking, Club dues, pop machine. and gun raffle.

For the years [REDACTED] through [REDACTED], income from such activities totaled \$[REDACTED]. You also received \$[REDACTED] from investment income, for total revenues of \$[REDACTED].

Your financial statements reflect the following uses of funds in the same period:

- | | |
|---|---------------|
| a) Expenses attributable to activities related to the organization's exempt business: | \$ [REDACTED] |
| b) Occupancy | \$ [REDACTED] |
| Total | \$ [REDACTED] |

In Schedule D of Form 1024, you stated that nonmembers were permitted to use club facilities and participate or attend club functions or activities. Your application also included a copy of a newspaper advertisement inviting public participation (for a fee) in archery and trap shooting events to be held at various dates during the year [REDACTED].

In a letter dated [REDACTED], we asked you to identify activities in which nonmembers were allowed to participate, and to provide a breakdown of income received from nonmembers. In your response dated [REDACTED], you addressed only income received during [REDACTED]. You stated, "Of the total \$[REDACTED] gross amounts derived from exempt purposes activities line 3 & 4, \$[REDACTED] is nonmember income." You further stated that the percentage of gross receipts from nonmembers for the use of club facilities is approximately [REDACTED]% of total revenue on line 8, and that the percentage of gross receipts from investment income is approximately [REDACTED]% of total revenue.

In the same letter, you listed the following as activities in which nonmembers may participate:

- Archery competition
- Trap (weekly clay pigeon shooting)
- Turkey shoot (Target shooting of cardboard targets)
- Turkey donations (facilitation of food donations to nonprofit groups)
- Hooked on Fishing (program promoting fishing to middle school children)
- Hunter safety classes
- Handicapped fishing derby
- Earth Day for kids.

Law:

Section 501(c)(7) of the Internal Revenue Code exempts from federal income tax, clubs organized for pleasure, recreation and other non-profitable purposes, substantially all of which are for such purposes and no part of the net earnings of which inure to the benefit of any private shareholder.

Section 1.501(c)(7) of the Income Tax Regulations provides as follows:

- a) The exemption provided by section 501(a) for organizations described in section 501(c)(7) applies to clubs which are organized and operated for pleasure, recreation and other non-profitable purposes, but does not apply to any club if any part of its net earnings inure to the benefit of any private shareholder. In general, this exemption extends to social and recreational clubs that are supported solely by membership fees, dues and assessments. However, a club otherwise entitled to exemption will not be disqualified because it raises revenues from members through the use of club facilities or in connection with club facilities.
- b) A club which engages in business, such as making its social and recreational facilities available to the general public, is not organized and operated exclusively for pleasure, recreation, and other non-profitable purposes, and is not exempt under section 501(a). Solicitation by advertisement or otherwise for public patronage of its facilities is prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes.

Public Law 94-568, as explained in Senate Report No. 94-1318, published in Cumulative Bulletin 1976-2, page 597, provides that a club exempt from taxation and describe in section 501(c)(7) is to be permitted to receive up to 35% of its gross receipts from a combination of investment income and receipts from non-members (from the use of its facilities or services) so long as the latter do not represent more than 15 percent of the total receipts. It is further stated that if an organization exceeds these limits, all of the facts and circumstances must be considered in determining whether the organization qualifies for exemption.

Revenue Ruling 58-589, 1958-2 C.B. 266, sets forth the criteria for exemption under section 501(c)(7) of the Code, and provides that a club must have an established membership of individuals, personal contacts, and fellowship. It also provides that, while the regulations indicate that a club may lose its exemption if it makes its facilities available to the general public, this does not mean that any dealings with nonmembers

[REDACTED]

will automatically cause a club to lose its exemption. A club may receive some income from the general public, that is, persons other than members and their bona fide guests, or permit the general public to participate in its affairs, provided that such participation is incidental to and in furtherance of the club's exempt purposes, such dealings with the general public and the receipt of income there from, does not indicate the existence of a club purpose to make a profit, and the income does not inure to club members.

Revenue Ruling 66-225, 1966-2 C.B. 227, describes an organization providing entertainment for its members, but controlled by a taxable corporation and operated as an integral part of such corporation's business, which was held not to qualify for exemption under section 501(c)(7).

The club's articles of incorporation stated that its purpose was to operate a private club for its members and to provide entertainment, food and refreshment for them. This club had three classes of memberships. (1) An annual dues paying membership; (2) a 90-day membership; and (3) a weekly membership for persons temporarily residing at an adjoining motel.

The club had a dining area and a cocktail lounge. The club patrons were permitted to bring liquor and alcoholic beverages to the club. This club was determined not to be operating exclusively for pleasure, recreation and other non-profitable purposes, and accordingly did not qualify for exemption under section 501(c)(7) of the Code.

In Revenue Ruling 68-638, 1968-2 C.B. 220, a country club formed to operate a golf course for its members received, as host of an annual golf tournament, substantial income from the public, and used this income for club operating expenses and improvements. The club was held not to qualify for exemption under code section 501(c)(7).

Similarly, in Revenue Ruling 1969-219, 1969-1 C.C. 153, a golf club that regularly held its golf course open to the general public and used this income for maintenance and improvement of club facilities did not qualify for exemption.

In Revenue Ruling 69-636, 1969-2 C.B. 127, a club's exempt status was held not to be adversely affected if it makes its facilities available to another exempt organization for charitable fund-raising activities at a charge equal to or less than direct costs to the club incurred in staging the event.

Revenue Procedure 71-17, 1971-1 C.B. 683, provides guidelines for determining the effect of gross receipts derived from nonmember use of a social club's facilities on the club's exemption under section 501(c)(7) of the Code. Rev. Proc. 71-17 sets as an audit standard that if the annual gross receipts from the general public for use of a club's facilities are five percent or less of the club's total gross receipts, the Service will consider that the existence of gross receipts from the general public does not indicate a nonexempt purpose. If the annual gross receipts from the general public exceed this audit

[REDACTED]

standard, this will be considered as one factor among all the facts and circumstances examined to determine whether there is a nonexempt purpose.

In Pittsburgh Press Club v. U.S. 536 F. 2d 572 (1976); 579 F. 2d 751 (1978); and 615 F. 2d 600 (1980), the court found that a substantial portion of the club's total gross receipts was from nonmember use of club facilities (determined to be between 11-17% of gross income). This indicated to the court that the club was engaged in business with the general public. Other factors noted by the court to consider in addition to the level of nonmember income include the purpose for which the club's facilities were made available to nonmember groups, the frequency of use of the club facilities by nonmembers, and the amount of net profits derived from the nonmember income.

Applicant's position

In a telephone discussion on [REDACTED], your representative stated that net proceeds from nonmember income are distributed to charity, rather than used to subsidize activities for Club members. You were offered an opportunity to submit in writing additional information to support this contention, and to provide any other information in support of your position; subsequently, additional time was allowed for such submission; but no additional information has yet been provided.

Application of Law

Revenue Ruling 58-589 provides that dealings with nonmembers will not necessarily cause the loss of exemption to a club provided that such participation is incidental to and in furtherance of the club's exempt purposes and such dealings with the general public and the receipt of income does not indicate the existence of a club's purpose to make a profit, and the income does not inure to club members.

Rev. Proc. 71-17 sets as an audit standard of five percent or less of the club's total gross receipts in determining whether or not an exempt purpose exists. When the annual gross receipts from the general public exceed this standard, this is one factor among all the facts and circumstances examined to determine whether there is a nonexempt purpose.

The information that you provided indicates that the percentage of your organization's gross receipts from nonmember sources is well in excess of the allowable limits. This level of nonmember would not be considered to be incidental. In addition, you have acknowledged that you seek public patronage of your facility and that nonmembers are permitted to engage in activities on a regular basis. Like the organizations described in Revenue Rulings 68-638 and 69-219, you use nonmember income to pay for general club operating expenses.

Your application does not support the verbal statement that nonmember income is used only for charitable purposes. Your financial statements do not show any distributions to charity, and the amount of income received from members appears insufficient to sustain your basic operations. For example, the figures in your letter of [REDACTED] demonstrate

[REDACTED]

that you received only \$[REDACTED] from members in [REDACTED]; however, your "occupancy" expenses alone for that year were \$[REDACTED]. Accordingly, your receipt and usage of excessive amounts of nonmember income results in prohibited inurement of income to members. Further, your advertisement for continued public patronage of your facilities and events is "prima facie evidence that the club is engaging in business and is not being operated exclusively for pleasure, recreation, or social purposes." as stated in the Regulations. Unlike the organization described in Revenue Ruling 69-636, your charges for nonmember usage of facilities are not "at or below cost", and nonmember patronage is not limited to a single annual charitable fund-raising event.

Conclusion

Based on the facts presented above, we hold that your organization does not meet the requirements for tax exemption under section 501(c)(7) of the Code.

Based on the facts that you have provided in your application for recognition of exemption, we are not able to conclude that you are organized and operated exclusively for social and recreational purposes rather than for private purposes. The fact that some of your activities may further social and recreational purposes as provided for in section 501(c)(7) does not detract from the existence of substantial nonexempt purposes. You cannot qualify for exemption since more than an insubstantial part of your activities does not further an exempt purpose.

Accordingly, you do not qualify for exemption under section 501(c)(7) of the Code because you do not meet the provisions in section 1.501(c)(7) of the Regulations.

Department of the Treasury - Internal Revenue Service
Consent to Proposed Adverse Action
(All references are to the Internal Revenue Code)

Case Number

Date of Latest Determination Letter

Employer Identification Number

Date of Proposed Adverse Action Letter

Name and Address of Organization

I consent to the proposed adverse action relative to the above organization as shown below. I understand that if Section 7428, Declaratory Judgements Relating to Status and Classification of Organizations under Section 501(c)(3), etc. applies, I have the right to protest the proposed adverse action.

NATURE OF ADVERSE ACTION

☒ Denial of exemption

☐ Revocation of exemption, effective.

☐ Modification of exemption from section 501(c)() to section 501(), effective

☐ Classification as a private foundation described in section 509(a), effective ****

☐ Classification as an private operating foundation described in sections 509(a) and 4942(j)(3), effective for

☐ Classification as an organization described in section 509(a)(), effective

☐ Classification as an organization described in section 170(b)(1)(A)(), effective

If you agree to the adverse action shown above, please sign and return this consent. You should keep a copy for your records.

If you sign this consent before you have exhausted your administrative appeal rights, you may lose your rights to a declaratory judgement under section 7428.

(Signature instructions on Back)

Name of Organization:

Signature and Title

Date

Signature and Title

Date